

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND  
APPLIED DEVELOPMENT ECONOMICS**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and Applied Development Economics ("Consultant") as of April 6, 2004.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on March 31, 2005, or the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$ 89,900.00 for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and

subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:
- Serial identification of bills;
  - The beginning and ending dates of the billing period;
  - A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
  - At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
  - The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
  - The Consultant's signature.
- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.
- 2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.
- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed (\$2,050.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

#### **4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3 Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.

**4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3.3** The policy must contain a cross liability clause.

**4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

**4.4 Requirements for All Policies.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**4.4.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

**4.4.5 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

**4.6 Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors,

consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. *Acceptance by City of insurance certificates and endorsements required under this Agreement* does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **Section 6. STATUS OF CONSULTANT.**

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and

approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.



- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
  - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
  - 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to

reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Cynthia Maxwell, who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:  
Kathie Studwell, Project Manager  
ADE  
2029 University Avenue  
Berkeley, California 94704
- Any written notice to City shall be sent to:  
Cynthia Maxwell  
455 East Calaveras Boulevard  
Milpitas, California 95035
- 10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas J. Wilson, City Manager

\_\_\_\_\_  
**Douglas Svensson, President, ADE**

ATTEST:

\_\_\_\_\_  
Gail Blalock, City Clerk

\_\_\_\_\_  
Taxpayer Identification Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Cynthia Maxwell, Principal Analyst

APPROVED:

\_\_\_\_\_  
Emma Karlen, Finance Director/Risk Manager

## **ECONOMIC DEVELOPMENT PLAN**

### **SCOPE OF SERVICES**

#### **Overview**

Exhibit A defines the scope of work, deliverables, schedule, variables, terms and conditions for the Consultant developing an Economic Development Plan (EDP) for the City of Milpitas.

The purpose of this consulting agreement is to develop an EDP that provides (1) a community profile with demographic and economic information and analysis, (2) economic goals and strategies, and an (3) implementation plan with a process for tracking performance and an updating and revision process. The selected Consultant will develop the EDP under the direction of city staff, and with guidance from the Milpitas Economic Development Commission (EDC) and City Council.

#### **Approach**

Preparation of an Economic Development Plan is a capacity-building exercise. It should not only provide solid data and information to build effective strategies, but the process itself should help to strengthen the human and organizational capacity of the community to move forward with economic development, expanding the number of economic development champions that will take leadership roles in implementation of the strategic plan.

Communities grow and diversify from within, building off their strengths and internal capabilities. It is critical to identify Milpitas' unique competitive advantages, leading to development of a unique set of strategies that leverage Milpitas' significant assets and are workable given available resources and partnerships. The Consultant will concentrate heavily on business retention and expansion opportunities, since that is the most effective economic development tool. It also provides a solid foundation to support marketing and business attraction efforts.

The Consultant's approach, therefore, is to mount an informative, data-driven process, that brings the community's economic realities and future potential into focus for a broad range of participants in the process. The process is designed to foster extensive interaction among the economic leadership of the community and to encourage new voices to be heard as well. The outcome will be a strategic plan that is owned by the community, complete with the tools needed to achieve Milpitas' specific goals and objectives.

**Scope of Work****TASK 1: PREPARE PROJECT WORK PLAN AND TIMELINE**

The Consultant will work with City staff and the EDC to confirm the Economic Development planning work plan and timeline. We will begin with a project initiation meeting with City staff at City Hall. The goal of this meeting is to articulate the priorities for the project, the milestones that require review and input, identify key individuals with local organizations and businesses, and refine the project tasks if needed.

As part of this task, the Consultant will work with City staff and the EDC to develop a public outreach component to the economic development planning process as described below.

Task	Product Description	Meetings	Weeks to Complete
1A	Product Schedule, including project milestones, tasks, deadlines, meeting dates submitted in Powerpoint.	City Staff: Kickoff	2

**TASK 2: BACKGROUND REVIEW**

The Consultant will review all relevant background materials, including the current General Plan, minutes of pertinent EDC and City Council meetings; the EDC's SWOT analysis; the Midtown Plan; current budget and Capital Improvement Plan; and other sources of data and information, such as Joint Venture: Silicon Valley and the Bay Area Council, required to complete the technical tasks. These data sources will be compiled into a background report structured like an annotated bibliography. The data review will include sources of demographic information, employment and labor force data, business climate indicators, real estate information, and locally derived data sources such as prior studies and reports. The project team will also collect data that typically requires formal City requests, such as EDD employment data and sales tax data. This step will also include a review of the public policy context that potentially impacts Milpitas' economic future.

Task	Product/ Description	Meetings	Weeks to Complete
2A	Background review report in MS Word. Annotated list of local and regional documents reviewed and report on scoping meeting with EDC.	City Staff: Kickoff EDC: Scoping Meeting	4

### TASK 3: VISIONING AND GOAL-SETTING; ECONOMIC DEVELOPMENT OUTREACH

To ensure that the economic development strategies reflect the city's vision and goals, the Consultant will work with City staff and the EDC to design and implement an outreach program. The purpose of outreach is to:

- Develop a vision for the economic development process
- Develop desired outcomes or goals for economic development
- Identify business' requirements for growth

Economic development outreach will have up to four components, which may include the following:

1. A survey of business and industry executives
2. A set of 15 to 20 interviews with key executives from driving industry clusters
3. A series of four or five focus groups. Possible focus groups include executives from driving industries, (software, hardware, bio-medical, semiconductor & electronic components); creative talent (media and lively arts, culture, history); land developers and managers; Asian entrepreneurs; and Hispanic entrepreneurs.
4. A public forum with the EDC to present the input gained from the business community and to give the public an opportunity to participate as well.

Input from the all components of the public outreach program will be used, together with input from city staff and the EDC, to develop an economic development vision and set of goals. This input will be a vital ingredient in developing the strategic initiatives the City of Milpitas, in partnership with business and industry executives, will implement to achieve those goals. The economic development outreach will be implemented concurrently with development of the economic profile, Task 4.

Depending on the specific outreach components approved by City staff and the EDC, the Consultant will design and lead the visioning and outreach process in the following manner:

- Work with city staff, the EDC, and representatives from business groups such as Joint Venture–Silicon Valley, the Chamber of Commerce, Silicon Valley Manufacturing Group and others—to identify focus group participants and CEOs to interview. In order to facilitate the cluster analysis in Task 4, the interviews will include both core and supplier industries.
- Schedule and conduct executive interviews. Executives will be asked to articulate their vision for their company and for Milpitas, their prospects for growth, their company's requirements for growth and how city government can assist with that growth. Information from interviews will also be used to complete the cluster analysis (see Task 4.2)
- Schedule and conduct focus groups. the Consultant will facilitate focus groups in a structured manner designed to elicit attendees' visions for Milpitas and the strategic actions necessary to create that vision.

In addition to generating business' thoughts on economic development goals and supportive government policies, the interviews will seek to confirm the statistical data in the cluster analysis in terms of documenting actual buyer-supplier relationships and to identify:

- Past and future trends in growth and development in the industries in order to confirm where job growth opportunities are most likely to occur
- Buyer-supplier gaps
- Marketing programs
- Transportation constraints
- Regulatory issues and
- Other concerns that affect the competitiveness of regional cluster groups.

In addition to surveying cluster industry executives, the Consultant can conduct a mail out survey for the non-cluster, local-serving businesses in Milpitas (including retail and personal services). Assuming there are about 1,000 local-serving businesses, the Consultant will try to obtain at least 100 responses, a 10-15% response rate. Higher response rates would require significant follow-up with businesses. the Consultant will work with Milpitas' IS Department to work out the logistics of survey administration and analysis of results. The survey respondents identified for the mail out survey will provide additional validity to both the economic base analysis and the executive interviews.



- Summarize input from survey, focus groups and executive interviews for review by City staff.
- Draft vision and goals for City staff and EDC review; present at EDC public forum along with summary of business community input.

Task	Product/ Description	Meetings	Weeks to Complete
3A	Description of methodology: Visioning and Goal-Setting; Economic Development Outreach	City Staff: 3	8; Concurrent with Task 4
3B	Public Participation Report in form of Powerpoint Presentation. Summarize input from outreach efforts. Draft Vision and Goals.	EDC Draft Review: 2 Public Forum: 1 Focus Groups: 4 Interviews: 15	

#### TASK 4: ECONOMIC PROFILE AND ANALYSIS

The Consultant will create an economic profile of Milpitas that identifies the city's economic strengths in terms of industry employment size, concentration and growth, and how these indicators have changed over time. This task pulls together all of the data sources and information gathered in the first three tasks and incorporates them into an analytical report. The analyses for this task are structured to provide the full accounting of local and regional economic trends needed to develop economic development policies and strategies.

##### 4.1 ECONOMIC BASE ANALYSIS—IDENTIFYING MILPITAS' ECONOMIC DRIVERS

Milpitas is a key player in the Bay Area and Silicon Valley economies, with large concentrations of high-tech businesses. Understanding the nature of these local employers and the dynamics of their relationships with other businesses, both locally and regionally, is crucial to identifying the most appropriate business retention, expansion and attraction opportunities for Milpitas. This task will help provide the context for the City's economic development strategy in terms of the business development priorities. One facet of the analysis includes forecasting the opportunity for employment growth of Milpitas' industries.

Economic base analysis reveals an economic region's basic economic drivers—those industries that, through export, bring wealth into the region. It

also identifies which support industries have trade relationships with these economic drivers through sales of specialized supplies and services.

The analysis will begin with **identifying Milpitas' economic drivers**, those businesses that are the primary source of job growth and wealth in the community. Identifying these economic drivers works on the underlying assumption that the most important sources of economic opportunity begin with the existing business base and the types of new relationships and opportunities that can form through expansion of this base. Based on this analysis, the Consultant will define export-oriented, related specialized suppliers, and local-serving industries.

The Consultant will conduct a **regional trends analysis** based on employment growth, industry concentration, and income trends. The regional trends analysis will reveal potential directions for the overall economy, and provide a basis for estimating potential job growth in Milpitas. The Consultant will examine the regional economy to provide a clear and quantifiable profile of Milpitas' role in the context of both the Bay Area and Silicon Valley. Moreover, the regional economic trends analysis will identify potential industries that are well represented elsewhere, but not necessarily in Milpitas. This can lead to business attraction targets, as well as development of new businesses that serve the region's economic drivers. The base analysis will allow the Consultant to analyze the market demand for commercial and industrial uses, and estimate Milpitas' capacity to capture its share of growth.

In order to complete these types of studies, the Consultant will use a variety of primary and secondary data sources. We will rely mainly on business interviews and surveys to provide primary information for the industry analysis (see Outreach, Task 3). The Consultant will also acquire secondary data sources such as regional employment data at the 4-digit SIC or 5-digit NAICS code collected through the ES202 program. We will also rely on real estate databases, business license databases, private sector business information sources, publications, trade group directories, and GIS data.

## 4.2 INDUSTRY CLUSTER ANALYSIS

Clusters are geographic concentrations of interconnected companies and institutions in a particular field. They include an array of linked industries, including suppliers of specialized inputs and infrastructure. They also include governmental and other institutions—universities, vocational training providers, trade associations—that provide specialized training, education, research, information and technical support.<sup>1</sup> Silicon Valley: Joint Venture has tracked the dynamics of Silicon Valley's industry clusters since the early 1990s. The Consultant will use JVS's cluster definitions, at the 4-digit SIC or 5-digit NAICS level, as a starting point to conduct the industry cluster analysis. The initial cluster definitions will be further refined with the addition of supplier industries using an input-output model. These industry clusters may include some or all of the following:

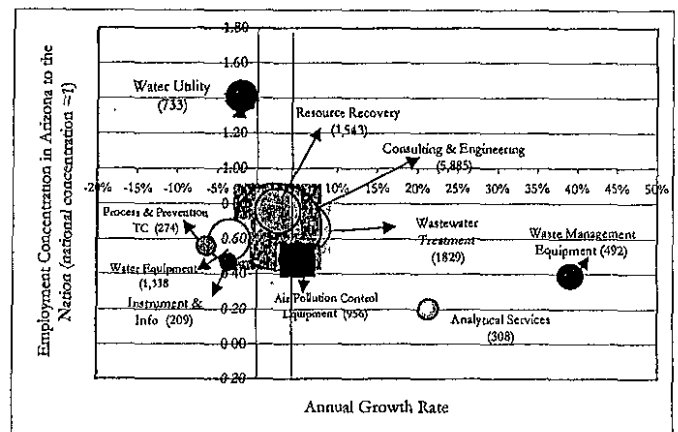
- Biomedical
- Corporate Offices
- Computer and Communications Hardware
- Creative Services
- Electronic Component Manufacturing
- Innovation Services
- Semiconductors
- Software

The cluster analysis will result in the following tables for each of Milpitas' clusters:

- Cluster size, growth, concentration (see bubble chart above)
- Cluster wages and productivity
- Cluster establishment size and growth; average establishment size
- Comparison of cluster and non-cluster wages and productivity

Through survey responses and interviews, and using the results of the economic base and input-output analysis, the Consultant will describe cluster relationships with other industries, both internal and external to the region; cluster growth opportunities; and critical actions necessary to support cluster growth and competitiveness.

Arizona Environmental Technology Industry Cluster Diversity



Portfolio of component industry cluster segments by employment concentration, 1989 to 1999  
 ----- State Growth Rate 4.1%  
 Source: Economy Com, Applied Development Economics.

<sup>1</sup> Porter, M., "Clusters and the New Economics of Competition," *Harvard Business Review*, November-December, 1998.

#### 4.3 RETAIL MARKET ANALYSIS

With prominent recent retail developments at McCarthy Ranch and the Great Mall, Milpitas has emerged as a regional retail provider over the past decade. This task will assess the degree to which the retail sector attracts wealth into the community, and identify any gaps that exist in the Milpitas retail base.

The Consultant will utilize our proprietary retail demand model that the company developed to identify and quantify household spending in over 50 different retail store and service business categories. Spending estimates that come from the model account for the spending patterns specific to different income groups. The model can also identify household spending for entertainment, personal, and professional services. In addition, the retail demand model applies a data adjustment that estimates nontaxable sales on items such as groceries and prescription drugs. By comparing the household demand with the existing sales, the Consultant will calculate the retail leakage for each individual store type.

In order to calculate the sales for existing businesses, the retail analysis will use data from the State Board of Equalization sales tax records, which the consultant uses to estimate taxable sales by store type. This task assumes that the City of Milpitas will provide the consultant with the detailed sales tax information in an audited form. The Consultant is aware of the confidentiality requirements associated with using sales tax data and will ensure that data reporting follow the necessary guidelines.

The Consultant will also forecast how projected household growth over the next five years translates into retail spending growth. This projection will use the retail demand model and account for new housing developments proposed for the area. In addition, the projection will estimate the income distribution for new residents by using the estimated prices of new housing as a benchmark. The Consultant will estimate how the leakages identified in the retail market analysis translate into demand for retail space.

Task	Product/ Description	Meetings	Weeks to Complete
4A	Economic Base Analysis. Statistical description of the economic base at the industry level. Reference SIC and NAICS codes. References, location and process for acquiring information of all data sources. Description of current mix of businesses; identification of how business type mix is changing. Analysis of balance between local serving and export businesses.	City Staff: 3  EDC: Report Presentation: 1	12
4B	Industry Cluster Analysis. Identification of emerging business clusters that might influence the economy. Major links between local firms and outside firms and how driving sectors are changing over time. Analysis of strength, competitiveness and growth potential of driving industry clusters		
4C	Retail Market Analysis. Identification of current mix of business and how changing. Calculate retail sales, retail leakage analysis and demand for retail space.		
4D	Final Economic Analysis. Incorporate suggestions and direction received from decision-makers and comments from stakeholders into report. Provide one reproducible hard copy and one digital copy. Analysis also submitted in Powerpoint for City staff and EDC review.		

#### TASK 5: BENCHMARKING MILPITAS TO COMPETITOR REGIONS

How does Milpitas' business climate compare with that of its competitor regions? What are Milpitas' strengths and weaknesses relative to these regions? High-tech business location decisions are based on four major factors that are place-based and the true source of a region's competitive advantage—access to world-class talent; access to specialized suppliers; access to knowledge networks; and supportive local and regional government agencies.

The Consultant will select up to ten measures in total , to measure these four factors and create charts comparing Milpitas to each of the designated competitor regions. The initial data analysis will identify Milpitas' distinct characteristics, and describe how the community is different from its neighbors, and the region as a whole. The Consultant will compare the selected measures for Milpitas with other cities or metropolitan areas that have competed with Milpitas, the Silicon Valley and the Bay Area for comparable technology industries. Through interviews with driving industry executives, the Consultant will identify up to five competitor regions, which could include the Austin, Phoenix, Salt Lake City, Las Vegas, Seattle, Durham, and Denver metropolitan areas.

**Access to world-class talent.** Silicon Valley's driving industries locate in the Valley specifically for the large pool of specialized talent available here. The Valley is primarily a location for research, development and design, as well as high-end manufacturing. Talented workers who have a choice of where to live and work, choose communities that meet their demands for quality of life—including world-class educational systems for their children, choices in types and costs of housing, access to the natural environment and recreation, clean air and water, access to the lively and visual arts and culture and continuing educational opportunities for themselves. The communities that can offer the best mix of quality of life factors has the greatest chance of recruiting world-class talent. Some of the possible measures to consider for benchmarking access to world-class talent include:

- Cluster wages; average productivity
- High school graduation rate; SAT scores
- Air quality
- New housing starts
- Median housing prices; percent of houses affordable to median income household.

**Access to specialized suppliers.** Companies are no longer the large, vertically integrated firms they were in the 1980s. In fact, small firms now dominate the Silicon Valley economy. The average firm size is less than 100 and average size of a software firm is 17. Companies partner with specialized suppliers for all needed inputs, including materials, design, IT and marketing. Access to these specialized suppliers is key to the competitiveness of Silicon Valley firms. One of the possible measures to consider for benchmarking access to specialized suppliers includes location quotient (or cluster concentration) for each cluster

**Access to knowledge and innovation networks.** Competitive industries invest in research and development that leads to innovative products and

processes that, in turn, lead to increased sales and wages for workers. Access to knowledge about markets and technologies is key to their innovation efforts. Networking with scientists from local universities, research institutes and other firms is critical in speeding the innovation process. Some of the possible measures to consider for benchmarking access to knowledge networks include:

- Venture capital investment
- Number of patents per 100,000 population
- Federal R&D investment at local universities
- Number of science, math and engineering graduates at local universities.

**Supportive local and regional government.** Government agencies play a critical role in the success of their businesses. Government provides high-quality infrastructure, land that is appropriately zoned, timely permitting and other regulatory procedures and a city finance system that supports a quality and sustainable economy and community. Some of the possible measures to consider for benchmarking supportive government include:

- Per capita government revenues and capital expenditures
- Per square-foot office and R&D lease rates

Task	Product/ Description	Meetings	Weeks to Complete
5A	Benchmarking/Competitor Cities Analysis. Analysis of other jurisdictions competing with Milpitas for specific business sectors. Analysis submitted in Powerpoint.	City Staff: NA	Concurrent with Task 4

#### **TASK 6: STRENGTHS, WEAKNESSES, OPPORTUNITIES, AND THREATS (SWOT) ANALYSIS**

Sustaining economic vitality depends on a community's ability to create an optimal business climate. Assessing Milpitas's existing business climate is an essential first step towards improving it. Business climate factors within Milpitas' influence include housing construction and affordability; local infrastructure; education and training; available land for business expansion; and quality of life factors, including parks, access to natural environment, and environmental quality.

In addition to internal business climate factors, the SWOT analysis will address external factors such as existing labor force demand, global market conditions as they pertain to the regional industry clusters, state and federal

policies affecting business competitiveness, and future regional transportation and development patterns.

The EDC's SWOT analysis provided an overview of Milpitas' business climate. The Consultant will build on this initial assessment by adding new information from the economic base and cluster analyses; providing a more detailed assessment of sites and their readiness; and assessing regulatory and other business climate factors in terms of the needs of business.

Since the user-readiness of available real estate is an important factor affecting the pace of development and the competitiveness of a community, the Consultant will include in the SWOT a review of existing industrial and commercial properties. While each individual property will not be reviewed, industrial and commercial areas within the city will be reviewed for their overall competitiveness. Most of the properties listed on the city's online commercial real estate page are buildings. A general overview of the relative age and condition of existing buildings in each area will be included in the SWOT.

<b>Task</b>	<b>Product/ Description</b>	<b>Meetings</b>	<b>Weeks to Complete</b>
6A	Analysis of Strengths, Weaknesses, Opportunities, Threats. Assess impact of local, state and federal policies on business sectors. Analysis submitted in Powerpoint.	City Staff: NA EDC: NA	Concurrent with Task 4

#### **TASK 7: DEVELOP STRATEGIC INITIATIVES AND OBJECTIVES**

The Consultant will develop a set of strategic initiatives that will, when implemented, start the City on a path towards achieving its goals for economic development. These strategic initiatives will be based on:

- The city's vision and goals
- Existing economic strengths as identified in the economic profile and analysis, the benchmarking process, and the SWOT analysis
- Challenges to overcome as identified in focus groups, interviews, and the SWOT analysis
- Opportunities for growth

At a minimum, strategic initiatives will address the general goals of business retention and expansion, incubating new and emerging industries, and the



types of incentives required to stimulate entrepreneurship, innovation and job growth.

Strategic initiatives will address major infrastructure improvements, nurturing innovation and entrepreneurship through industry-academia partnerships; improving regulatory processes that create barriers to desired and appropriate development; preparing the future workforce; increasing neighborhood and housing quality and choices; and forming partnerships with business leaders to implement the plan. The Consultant will present strategic initiatives to city staff and the EDC for review and approval.

The Consultant will develop a set of specific, measurable objectives for each strategic initiative. Objectives may address measures to improve workforce opportunities; formation of cluster networks; linking entrepreneurs to capital; development of supportive tax and regulatory policies; and increasing access to important quality of life elements such as arts and culture, parks and recreation and natural habitat.

Task	Product/ Description	Meetings	Weeks to Complete
7A	Draft Strategic Initiatives & Objectives. Consistent with Vision and Goals developed in Task 3. Objectives will be specific and measurable. May include consideration of strengthening businesses, providing qualified and dependable labor force, access to capital, adaptive research and technology, competitive tax and regulatory policies, advanced infrastructure, appealing quality of life, customer service and business networks.	City Staff: 1 EDC: 1	6
7B	Final Vision, Goals, Strategic Initiatives and Objectives. Submitted in Powerpoint.		

#### TASK 8: PREPARE IMPLEMENTATION PLAN

The key to successful implementation of a community's economic development plan is the involvement of and partnership with organizations and individuals with a vested interest in the city's future. In Milpitas, these organizations would include industry cluster leaders, entrepreneurs,

education and training providers, financial and venture capital institutions, real estate developers, and the EDC. A successful economic development outreach effort will result in new champions for the city's economic development vision and goals—champions that will work with the City to implement the economic development strategic initiatives and objectives. The Consultant will complete both the analytical and outreach components of the plan with the goal of bringing new champions to the table.

The Consultant understands that the Economic Development Plan needs to function as a work plan for the city staff and the EDC, and that this Plan must provide guidance on the use of general and redevelopment funds for economic development. The Consultant will articulate the implementation strategies in very specific terms, working with City staff to set the recommendations within a realistic framework for staff activity.

With input from city staff, the Consultant will develop an implementation timeline for each objective; identify business and other organizations as well as all city departments and agencies with responsibility for implementation; and propose measures to monitor plan implementation as well as a process for updating and modifying the plan.

Task	Product/ Description	Meetings	Weeks to Complete
8A	Draft Implementation Plan. Identify costs per strategy, responsible and collaborative parties, time schedule for start and finish, monitoring measures, process for updates and modification.	City Staff: 3 EDC: Draft Review: 1	4
8B	Final Implementation Plan. Summarize final plan in Powerpoint for public presentation to CAC and City Council		

#### TASK 9: WRITE FINAL ECONOMIC DEVELOPMENT PLAN AND PREPARE PUBLIC PRESENTATION

The Consultant will write a final report that incorporates:

- Executive Summary
- An overview of Milpitas' economic development planning process, including background, methodology and survey report;

- A description and summary of the economic development outreach program;
- A description of Milpitas' economic development vision and goals;
- The economic profile, including cluster analysis and retail market analysis;
- The benchmarking analysis of competitor regions;
- The SWOT analysis;
- The strategic initiatives and objectives;
- The implementation plan; and,
- An annotated review of background materials.

The Consultant will provide City staff with three copies of the Economic Development Plan Final Report in three-ring binders, a reproducible hard copy, and a digital copy.

The Consultant will prepare and present to the City Council, the EDC, and the public a PowerPoint presentation of the summary of the key messages of the Economic Development Plan. A CD of this presentation will be given to city staff.

<b>Task</b>	<b>Product/ Description</b>	<b>Meetings</b>	<b>Weeks to Complete</b>
9A	Final Report. See above for items included	City Staff: 2	6
9B	Presentation Program. Summarize final report for public presentation. Provide one digital copy to the City. Provide wrap-up presentation to EDC and City Council	EDC & City Council: 2	

## CONSULTANT RESPONSIBILITIES

- All deliverables provided by Consultant will meet quality standards common to area and associated professions. The quality and content of the deliverables shall be in sufficient detail that the City shall be able to move forward to the next project step or milestone.
- Consultant shall review and carefully consider comments from City. Consultant shall address, incorporate or reasonably answer each comment.

- Consultant will consult with, and meet with if appropriate, City staff responsible for various aspects of the project within the meeting framework listed under each task. Additional meetings shall be invoiced at the consultant's hourly rates.
- Consultant will begin work on each task after the City authorizes Consultant in writing to initiate the Task. A 10% retention shall be released upon the City's satisfactory acceptance of the work after completion of the Final Report (Task 9).
- During Task 2, Consultant will review and become familiar with all background information necessary to undertake the following tasks identified for this project.

## CITY RESPONSIBILITIES

- Provide Consultant with background materials to accomplish item number 1.5 above. Materials will include:
  - EDC and CC minutes
  - EDC's analysis of strengths, weaknesses, threats and opportunities
  - Milpitas General Plan, Midtown Plan, Budget, CIP
- Comment and/or review Consultant work at any time in the process.
- Schedule and coordinate meetings for Consultant with City staff or City representatives.
- The time to complete tasks and deliverables will be timed to allow the City to make decisions in conjunction with regular council meetings. Subsequent work will be initiated after City provides Consultant with written authorization to begin work.

## TIMELINE

Tasks	Months											
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan		
<b>I.</b> Prepare Project Workplan and Timeline												
<b>II.</b> Background Review												
<b>III.</b> Economic Development Outreach: Visioning, Goal-Setting												
Compile database of business owners in Milpitas												
Develop, conduct survey and analyze responses												
ID cluster leaders												
Schedule and conduct interviews												
Schedule and conduct focus groups												
Schedule, advertise and facilitate public forum												
Summarize input; Draft desired outcomes, goals and vision for economic development												
Present outreach findings to EDC												
<b>IV.</b> Economic Profile and Analysis												
Conduct Economic Base Analysis												
Conduct Cluster Analysis												
Retail Market Analysis												
<b>V.</b> Benchmarking Milpitas to Competitor Regions												
Select measures to benchmark												
Conduct benchmarking analysis												
Prepare charts												
<b>VI.</b> Conduct SWOT Analysis												
<b>VII.</b> Develop Strategic Initiatives and Objectives												
Develop strategic initiatives; review with City staff												
Develop objectives for each Initiative												
<b>VIII.</b> Prepare Implementation Plan												
Prioritize strategies, with help of EDC												
Prepare timeline and budget for Implementation												
<b>IX.</b> Final Report and Presentation Program												
Write Final Economic Development Plan												
Prepare Powerpoint Presentation												
Presentation to City Council & Public												
Meetings with EDC												

Ongoing

## KEY STAFF

The Consultant has assigned top staff to this project, including the company President and three Senior Associates. We understand that the project must be completed by January 31, 2005, and we are prepared to make the commitments to ensure that this schedule is met. It is a hallmark of the Consultant management that all of our senior personnel are actively involved with our clients and are on the frontline in working to complete high quality projects on time and on budget. The following staff have been assigned to this project:

- **Doug Svensson, AICP, ADE President,** will be the Project Director.

- **Kathie Studwell, Senior Associate**, will serve as the Consultant's project manager. She will provide day-to-day contact and coordination with City staff and will manage ADE's resources to complete the work.
- **Wes Ervin, Senior Associate**, will primarily focus on the business climate analysis and the strategic plan. He will be assisted by **Randy Evans, Associate**, who will collect the data for both the SWOT analysis and the benchmarking analysis.
- **Peter Cheng, Senior Associate**, will conduct the technical market studies for the project, including the economic base analysis and the industry cluster analysis, Mr. Cheng will also evaluate the retail market for Milpitas.
- **Claudette Carr** will produce reports, presentations and other materials for the economic plan.

## ECONOMIC DEVELOPMENT PLAN BUDGET AND RATES

The Consultant will complete the entire economic plan process for a not-to-exceed figure of \$89,900. The specific time commitments for each staff member are shown in the table below, along with the direct expenses. Direct expenses shall include travel, document reproduction and postage.

Tasks	Svensson @150/hr	Studwell @125/hr	Ervin @125/hr	Cheng @100/hr	Evans @85/hr	Carr @70/hr	Expenses	Total
1. Work Plan and Timeline	8	16					100	\$1,700
2. Background Review	8	8	8	8	8			\$4,680
3. Visioning and Goal Setting	20	96		48		24	\$600	\$23,680
4. Economic Profile and Analysis	24	8		140		48	\$300	\$13,260
5. Benchmarking			16		62		\$400	\$8,340
6. SWOT Analysis		12	32		40		\$300	\$7,950
7. Strategic Initiatives	16	20	24				\$100	\$8,000
8. Implementation Plan	24	16	8				\$50	\$6,650
9. Economic Development Plan	24	40	8			12	\$200	\$10,640
<b>SUBTOTAL</b>	<b>116</b>	<b>210</b>	<b>96</b>	<b>196</b>	<b>112</b>	<b>44</b>	<b>\$2,050</b>	<b>\$89,900</b>
<b>Contingency (10%)</b>								<b>\$9,990</b>
<b>TOTAL</b>								<b>\$99,890</b>